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29 CFR Ch. XVII (7–1–01 Edition)

the Assistant Secretary may from time to time require.

[50 FR 29669, July 22, 1985, as amended at 65 FR 36624, June 9, 2000]

§ 1952.225 Level of Federal enforcement.

(a) As a result of the Assistant Secretary's determination granting final approval to the Tennessee plan under section 18(e) of the Act, effective July 22, 1985, occupational safety and health standards which have been promulgated under section 6 of the Act do not apply with respect to issues covered under the Tennessee plan. This determination also relinquishes concurrent Federal OSHA authority to issue citations for violations of such standards under sections 5(a)(2) and 9 of the Act; to conduct inspections and investigations under section 8 (except those necessary to conduct evaluation of the plan under section 18(b) and other inspections, investigations, or proceedings necessary to carry out Federal responsibilities not specifically preempted by section 18(e)); to conduct enforcement proceedings in contested cases under section 10; to institute proceedings to correct imminent dangers under section 13; and to propose civil penalties or initiate criminal proceedings for violations of the Federal Act under section 17. The Assistant Secretary retains jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 before the effective date of the 18(e) determination.

(b)(1) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Tennessee plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general

industry and construction standards (29 CFR Parts 1910 and 1926) appropriate to hazards found in these employments; railroad employment, not otherwise regulated by another Federal agency; employment at Tennessee Valley Authority facilities and on military bases. Federal jurisdiction is also retained with respect to Federal government employers and employees, and the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations.

(2) In addition, any hazard, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdiction for reasons not related to the required performance or structure of the plan shall be deemed to be an issue not covered by the finally approved plan, and shall be subject to federal enforcement. Where enforcement jurisdiction is shared between Federal and State authorities for a particular area, project, or facility, in the interest of administrative practicability Federal jurisdiction may be assumed over the entire project or facility. In either of the two aforementioned circumstances, Federal enforcement may be exercised immediately upon agreement between Federal and State OSHA.

(c) Federal authority under provisions of the Act not listed in section 18(e) is unaffected by final approval of the plan. Thus, for example, the Assistant Secretary retains his authority under section 11(c) of the Act with regard to complaints alleging discrimination against employees because of the exercise of any right afforded to the employee by the Act, although such complaints may be referred to the State for investigation. The Assistant Secretary also retains his authority under section 6 of the Act to promulgate, modify or revoke occupational safety and health standards which address the working conditions of all employees, including those in States which have received an affirmative 18(e) determination, although such standards may not be federally applied. In the event that the State's 18(e) status is subsequently withdrawn and Federal authority reinstated, all Federal standards, including any standards

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promulgated or modified during the 18(e) period, would be federally enforceable in that State.

(d) As required by section 18(f) of the Act, OSHA will continue to monitor the operations of the Tennessee State program to assure that the provisions of the State plan are substantially complied with and that the program remains at least as effective as the Federal program. Failure by the State to comply with its obligations may result in the revocation of the final determination under section 18(e), resumption of Federal enforcement, and/or proceedings for withdrawal of plan approval.

[50 FR 29670, July 22, 1985, as amended at 65 FR 36624, June 9, 2000]

§ 1952.226 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations:

Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N3700, Washington, DC 20210;

Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, Atlanta Federal Center, 61 Forsyth Street, SW, Room 6T50, Atlanta, Georgia 30303; and

Office of the Commissioner, Tennessee Department of Labor, 710 James Robertson Parkway, Nashville, Tennessee 37243-0659.

[65 FR 36624, June 9, 2000]

§ 1952.227 Changes to approved plans.

(a) *Legislation.* (1) On March 29, 1994, the Assistant Secretary approved Tennessee's revised statutory penalty levels which are the same as the revised Federal penalty levels contained in section 17 of the Act as amended on November 5, 1990.

(2) [Reserved]

(b) *The Voluntary Protection Program.* On October 24, 1996, the Assistant Secretary approved Tennessee's plan supplement, which is generally identical to the Federal Voluntary Protection Program, with the exception that the State's VPP is limited to the "Star"

level participation for general industry firms.

[59 FR 14556, Mar. 29, 1994, as amended at 61 FR 55099, Oct. 24, 1996]

Subpart Q—Kentucky

SOURCE: 50 FR 24896, June 13, 1985, unless otherwise noted.

§ 1952.230 Description of the plan as initially approved.

(a) The plan designates the Department of Labor as the agency responsible for administering the Plan throughout the State. It proposes to define the occupational safety and health issue covered by it as defined by the Secretary of Labor in § 1902.2(c)(1) of this chapter. All occupational safety and health standards promulgated by the United States Secretary of Labor have been adopted under the Plan as well as a certain standard deemed to be "as effective as" the Federal standard, except those found in parts 1915, 1916, 1917 and 1918 of this chapter (ship repairing, ship building, ship breaking and longshoring). All Federal standards adopted by the State became effective on December 29, 1972.

(b) Within the plan there is enabling legislation revising chapter 338 of the Kentucky Revised Statutes which became law on March 27, 1972; as well as legislation enacted and approved in a Special Session of the Legislature in 1972 amending the enabling legislation. The law as enacted and modified gives the Department of Labor, Division of Occupational Safety and Health, the statutory authority to implement an occupational safety and health plan modeled after the Federal Act. There are provisions within it granting the Commissioner of Labor the authority to inspect workplaces and to issue citations for the abatement of violations and there is also included a prohibition against advance notice of such inspections. The law is also intended to insure employer and employee representatives an opportunity to accompany inspectors and to call attention to possible violations; notification of employees or their representatives when no compliance action is taken as a result of employee alleged violations;